

Dr. A. R. Menon (*Minister for Rural Development*):

(a) Yes.

(b) Now that Nemmara is to be constituted into a Town Council from 1116 onwards, this question will be taken up by the Council.

HIGH COURT—ORIGINAL JURISDICTION AND POWERS TO ISSUE WRITS OF MANDAMUS, ETC.,—INVESTMENT OF

57. Mr. A. B. Salem (*Mattancheri*): Will the Government be pleased to inform.—

(a) whether they have perused the judgment of the High Court in Civil Miscellaneous Petition No. 145/1114, published in the Cochin Law Reports, Vol. XXX, pages 491 to 508;

(b) in view of the pronouncement of the Cochin Chief Court reported in 19 Cochin 32, in the case of Padiar, S. K. Vs. The Chairman, Municipal Council, Ernakulam, and in view of the High Court Full Bench Judgment in C. M. P. No. 145/1114, will the Government be pleased to take steps to invest the High Court with original jurisdiction and powers to issue writs of *Mandamus*, *Certiorari*, *Habeas Corpus*, etc., on petitions in suitable cases?

Mr. K. Achyuta Menon (*Secretary to Government*):

(a) Yes.

(b) No.

Mr. A. B. Salem (*Mattancheri*): With reference to the answer to sub-division (b) may I know why 'no'?

Mr. K. Achyuta Menon (*Secretary to Government*): It is a very large question to deal with in the nature of questions and answers. The matter is still *integra*, so far as the courts are concerned. The Court has not yet come to a finding whether they have got that power or not.

Mr. A. B. Salem (*Mattancheri*): They have decided it already.

Mr. K. Achyuta Menon (*Secretary to Government*): I have gone through the judgment very clearly, and I cannot find anywhere that the Judges have made any observation like that. The first Judge has made an observation that he is reluctant to express an opinion one way or other. Then the Chief Justice has made an observation

which is in your favour. Then, Justice Mr. Narayana Ayyar has assumed the jurisdiction, but has not expressed any final opinion on this point, because, in his view, it was unnecessary for the disposal of the petition.

Mr. A. B. Salem (Mattancheri): I am asking a question on the view of the High Court *viz.*, they failed to decide this point. The first Judge says: "I am for assuming the jurisdiction; but I do not make any pronouncement". The second Judge says, "I am not for assuming jurisdiction; but I do not make any pronouncement". The third Judge says: "this is a very great question and my mind is left in great doubt". In these circumstances, it is necessary that the public should know what powers the High Court have or have not.

Mr. K. Achyuta Menon (Secretary to Government): The Government feel in these matters that the initiative must come from the Judges who administer the law. There has been no finding at all in the Judgment.

Mr. A. B. Salem (Mattancheri): But there has been a finding in 19 Cochin.

Mr. President : Was the petition in question disposed of on the position that the High Court has no jurisdiction ?

Mr. K. Achyuta Menon (Secretary to Government): Even assuming there is original jurisdiction, other conditions were not fulfilled.

Mr. C. R. Iyyunni (Trichur-South): Whatever that may be, will it not be better now to make the matter clear by a statute, to see that either they have that power, or they have not ?

Mr. K. Achyuta Menon (Secretary to Government): It is only when the Judges express that there is doubt upon that question, that Government should proceed in this behalf. Here, they simply say it is a matter which need not be considered. The Chief Justice proceeds upon the assumption that he has got the power.

Mr. A. B. Salem (Mattancheri): The judgment is even now in my mind. The Judge says: "I am for assuming power; but I make no pronouncement". In 19 Cochin, they said: "we have absolutely no power". Then Justice Manjuran says: "there is 19 Cochin stirring us in the face and my mind, as expressed in the *obiter dictum*, goes in the way to say that there is no jurisdiction, but I make no pronouncement". The third Judge then says, "my mind also, is in great doubt".

Now, let me ask which is the litigant that would go before that court with a *mandamus* petition to make this clear? Therefore it is necessary to decide one way or the other, *i. e.*, to say that either they have got the power or not. When are they to decide? When the question comes up before them or when a question does not arise?

Mr. K. Achyuta Menon (*Secretary to Government*): When it is necessary.

Mr. A. B. Salem (*Mattancheri*): This question was raised and this is the ground that went against that judgment. If the judgment was passed with jurisdiction, the case before the commissioners would have been *res judicata*.

Mr. M. K. Devassy (*Adur*): May I know whether it is the intention of the Government that the High Court should have jurisdiction?

Mr. K. Achyuta Menon (*Secretary to Government*): Only when the High Court needs.

Mr. M. K. Devassy (*Adur*): My point is, if that is the intention of the Government why not they provide for it clearly?

Mr. K. Achyuta Menon (*Secretary to Government*): I must decline to say anything upon the intention of Government. The Judges have discussed that question and they were definitely of opinion that for the purpose of the disposal of that case, the consideration of that question was unnecessary. At least, the *obiter dictum* was in favour of the contention that the power exists.

Mr. C. R. Iyyunni (*Trichur-South*): Then, why should that power be left in such a nebulous condition?

Mr. K. Achyuta Menon (*Secretary to Government*): Who said that the power is in a nebulous condition? The Judges have only said: "we decline to go into the matter".

Mr. A. B. Salem (*Mattancheri*): What the Judge said is this: "Regarding jurisdiction, we are in doubt; but we will dispose of this matter on another ground leaving the question of jurisdiction in a nebulous condition". 19 Cochin clearly says that under the Specific Relief Act, only power is given to the High Court now, and the old Supreme Court power has been taken away by the provision in the Specific Relief Act, and that Specific Relief Act provision is not enacted in Cochin.

Mr. M. K. Devassy (*Adur*): May I know whether Mr. Salem's statement that they are left in doubt is correct?

Mr. K. Achyuta Menon (*Secretary to Government*): May I just read three sentences from the judgment of the Hon'ble Judges to clear this point? Mr. Thomas Manjuran says: "The petitioner's contention is that a jurisdiction corresponding to that conferred by section 45 of the British Indian Specific Relief Act on some of the High Courts in British India, is vested in this High Court by the Government of Cochin Act under which it was constituted". Then again, he says: "the point however was not and could not be on account of exigencies of time. . . . when dealing with such an important matter relating to the jurisdiction of this court, and we feel reluctant to express a definite opinion, one way or the other without further investigation and elucidation".

Then Justice Mr. Neelakanta Menon says: "It is a common law writ and it is difficult to assume that this court which is the highest court in the land and which is dispensing justice in the name of the Sovereign, has not got the power to issue this very useful writ in very proper cases where it is clear that the advancement of justice cannot be attained in any other manner. I think, from the very nature and status of this court, at common law, this court has or ought to have the authority to issue a writ of *mandamus* in every case where there is no other specific legal remedy for a legal right, and where justice requires that there ought to be one.

Mr. A. B. Salem (*Mattancheri*): Would you kindly read the end of it?

Mr. K. Achyuta Menon (*Secretary to Government*): The end is on the question of the merit of the petition itself.

Further on, the Learned Judge has said: "However, as the matter has not been fully argued, I do not wish to make any pronouncement on this rather important question;" and Mr. Justice Narayana Ayyar assumed that the power existed, but that on the assumption that the power had existed, a case had not been made out.

Mr. A. B. Salem (*Mattancheri*): May I point out to the hon'ble Secretary that the statement made in the judgment that the exigencies of the time did not allow it to be argued, is not correct?

Mr. President: Order, Order. Now, the hon'ble member is discussing upon the merits of the judgment. I cannot allow that discussion here.

Mr. A. B. Salem (*Mattancheri*): The first statement made there in the court in opening the case, was that 19 Cochin assumed that there is absolutely no jurisdiction and that the case may be

argued on the question of jurisdiction. Therefore, the issue in question for decision comes only after overcoming the jurisdiction question. Then the observation from the Bench was, "assume jurisdiction and argue the case." That was what happened; and then in the end when the judgment came, the judgment was that the jurisdiction was left in doubt.

Mr. K. Achyuta Menon (*Secretary to Government*): No. No.

Mr. A. B. Salem (*Mattancheri*): Yes. That is the case. If my statement is wrong, I take the fullest responsibility of it. I say, apart from the statement in the judgment being correct, we want, our High Court should have this jurisdiction, the jurisdiction of *habeas corpus*, writs of *certiorari* writs of *mandamus* etc. There is one judgment (19 Cochin) which says clearly that there is no jurisdiction; and the present judgment does not go this way or the other. Therefore what am I to do? What about *habeas corpus*? What about *certiorari*? I think it was the intention of the Government to invest the High Court with these powers, when they passed the Government of Cochin Act.

Mr. President: Does the hon'ble member think that he can argue his question during question time?

Mr. A. B. Salem (*Mattancheri*): To make it understandable I said so much. Is it the case of the Government that they wish to give them these powers or not?

Mr. President: That question has already been answered.

JETTY—CONSTRUCTION OF—NEAR RAILWAY STATION— WILLINGDON ISLAND

58. Mr. Shabdai S. Koder (*Nominated*): Will the Government be pleased to state.—

(a) whether a jetty has been provided near the Railway Station in Willingdon Island for Railway passengers from Mattancheri;

(b) if the answer is in the affirmative, what is the distance from the jetty to the Railway Station?

Mr. K. Achyuta Menon (*Secretary to Government*):

(a) Yes.

(b) Approximately two furlongs.

Mr. Shabdai S. Koder (*Nominated*): Has the jetty been completed?